

Before the  
**FEDERAL COMMUNICATIONS COMMISSION** **FEB 10 1994**  
Washington, D.C. 20554

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In the Matter of )  
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Policies and Rules )  
Concerning Toll Fraud )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 93-292

To: The Commission

**REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY  
AND THE PUERTO RICO COMMUNICATIONS CORPORATION**

Puerto Rico Telephone Company and the Puerto Rico Communications Corporation ("PRTC/PRCC"), by their attorneys and pursuant to 47 C.F.R. § 1.415, hereby submit their Reply Comments on the Commission's Notice of Proposed Rulemaking in the captioned docket, Policies and Rules Concerning Toll Fraud, FCC 93-496 (rel. Dec. 2, 1993) ("NPRM"). The NPRM seeks comment on a variety of issues related to the problem of toll fraud.

**I. INTRODUCTION**

In its Comments, PRTC/PRCC expressed its support for the Commission's goal of reducing the incidence of toll fraud.<sup>1</sup> It noted, however, that this proceeding was misguided in that it focuses on allocating the liability for toll fraud rather than on the reduction, if not prevention, of toll fraud itself.<sup>2</sup> PRTC/PRCC urged the Commission not to take the step of nullifying provisions in local exchange company ("LEC") tariffs which limit LEC liability

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<sup>1</sup> Comments of Puerto Rico Telephone Company and the Puerto Rico Communications Corporation, filed Jan. 14, 1994 ("PRTC/PRCC Comments"), at 2.

<sup>2</sup> Id. at 2-3.

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for losses resulting from LEC actions or omissions except in the case of willful misconduct.<sup>3</sup> Finally, it demonstrated that the Commission's proposals to require industry participants to meet certain bright line standards or absorb the losses for toll fraud if they are not met merely raises a whole new set of fact-based issues; it does nothing to resolve the problem of toll fraud.<sup>4</sup>

**II. THE COMMISSION SHOULD FOCUS ON THE PREVENTION AND DETECTION OF TOLL FRAUD RATHER THAN ALLOCATION OF THE LOSSES FROM TOLL FRAUD**

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The Commission's NPRM expresses an appropriate sentiment in its goal of dealing with the issue of toll fraud. As the plethora of comments on this NPRM makes evident, this issue is a widespread problem, affecting all segments of the telecommunications industry from telephone service customers to carriers. Unfortunately, while the Commission's NPRM expresses a worthy goal, it in practice focuses on a goal that is not so worthy, arbitrarily allocating the liability for losses from toll fraud with little regard to the effects of those allocations. PRTC/PRCC noted this problem with the NPRM,<sup>5</sup> and many parties echoed this in their comments.<sup>6</sup>

A truth that appears to have eluded the Commission and many commenters to some extent is that losses due to theft (which is what toll fraud

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<sup>3</sup> Id. at 3-5.

<sup>4</sup> Id. at 5-6.

<sup>5</sup> PRTC/PRCC Comments at 2-3.

<sup>6</sup> See, e.g., Comments of Competitive Telecommunications Association, filed Jan. 14, 1994, at 1; Comments of the National Telephone Cooperative Association, filed Jan. 14, 1994 ("NTCA Comments"), at 2; Comments of U S West Communications, Inc., filed Jan. 14, 1994 ("U S West Comments"), at 6; Comments of GTE, filed Jan. 14, 1994 ("GTE Comments"), at 2-3.

is) are a cost of doing business. PRTC/PRCC suffers fraud losses in its capacity as a LEC, as a cellular carrier, and as a payphone owner. It absorbs many of those losses. Other portions of the telecommunications industry must absorb the losses which they incur as a result of their participation in the industry. It is unrealistic to enter a for-profit business and assume that other participants in the same industry will absorb your losses. Thus, PRTC/PRCC urges the Commission to refocus this proceeding on preventing and detecting toll fraud and to recognize that when toll fraud losses and other losses occur, they should be absorbed as a cost of doing business.

### **III. NULLIFICATION OF LEC TARIFF LIABILITY LIMITATION PROVISIONS IS NOT IN THE PUBLIC INTEREST**

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In its NPRM, the Commission examined the issue of fraud perpetrated through alternate billing systems such as calling cards, collect calls and third party billed calls ("ABS"). NPRM at ¶ 39. When these types of billing mechanisms are used, the interexchange carrier ("IXC") can verify the validity of the card or whether the line being billed has any billing restrictions on it by querying a Line Information Database ("LIDB"). LECs are usually the provider of the information contained in the LIDB. The Commission has expressed concern that LECs do not have sufficient incentives to make LIDB as effective as it could be because their tariffs contain provisions which limit their liability, thereby "shield[ing] the LECs from responsibility for toll losses." NPRM at ¶ 39.

In its Comments (at 3-5), PRTC/PRCC vigorously opposed any expansion of LEC liability beyond its current limits. As PRTC/PRCC observed in its Comments, limitation of liability provisions in LEC tariffs have long

been sanctioned by the courts for good reason.<sup>7</sup> The Commission itself has refused to alter these provisions in the past because to expand the liability of LECs would result in increased rates for all ratepayers,<sup>8</sup> flying in the face of the Commission's statutory mission of ensuring reasonable rates.<sup>9</sup>

Several commenters concurred with PRTC/PRCC's position on this issue.<sup>10</sup> NYNEX states that increasing LEC liability and thus LEC rates could make fraud prevention services provided by LECs such as LIDB, billed number screening ("BNS") and originating line screening ("OLS") too expensive for many LEC customers to use, thereby defeating the purpose of these services.<sup>11</sup> The Independent Payphone Association of New York ("IPANY") asserts that this is untrue:

Once a central office switch is properly programmed to include blocking and screening features on a Public Access Line, there should be absolutely no reason -- other than human error -- for fraudulent toll calls to occur on those lines. . . . Accordingly,

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<sup>7</sup> See, e.g., Western Union Tel. Co. v. Esteve Bros. & Co., 256 U.S. 566, 571 (1921); Western Union Tel. Co. v. Priester, 276 U.S. 252, 259-260 (1927); Holman v. Southwestern Bell Tel. Co., 358 F.Supp. 727, 729 (D. Kan. 1973); Wheeler Stuckey, Inc. v. Southwestern Bell Tel. Co., 279 F. Supp. 712, 714-15 (W.D. Okla. 1967).

<sup>8</sup> The American Telephone & Telegraph Company, 76 FCC 2d 195, 198 (1980); The American Telephone & Telegraph Company, 82 FCC 2d 370, 372 (1980). See also, e.g., Pilot Indus. v. Southern Bell Tel. & Tel. Co., 495 F. Supp. 356, 361 (D.S.C. 1979); Professional Answering Serv. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 60 & nn.9-11, 64-65 (D.C. 1989).

<sup>9</sup> The issues addressed in this NPRM relate to the problem of interstate toll fraud. Clearly, the Commission does not have the authority to preempt state law regarding intrastate toll fraud. Therefore, the Commission should affirm that, by adopting rules regarding interstate toll fraud, it is not preempting any state regulations or statutes on toll fraud on an intrastate basis.

<sup>10</sup> See, e.g., NYNEX Comments, filed Jan. 14, 1994, at 9-17.

<sup>11</sup> See also Rochester Tel Comments at 8-9; GTE Comments at 12.

placing liability on LEC's [sic] will not -- or should not -- result in higher costs which should be built into the rates for these services.<sup>12</sup>

IPANY's description of a toll fraud scenario involving LIDB proves the point. LEC limitation of liability provisions are intended to cap LEC liability for errors committed by humans or for failures of LIDB which are not attributable to gross misconduct. The courts and the Commission have determined that the need for universal affordable telephone service outweighs the need to compensate individual LEC customers who suffer losses due to human error or other LIDB failures.<sup>13</sup>

As U S West points out, expanding LEC liability for failures of LIDB changes the purpose of LIDB into an insurance program or guarantee against fraud losses.<sup>14</sup> LIDB, however, is not that; it is a source of information. The LEC has no control over whether the call is eventually authorized by the LIDB user or not. The LEC merely provides the LIDB user with information which can be used in the LIDB user's decision whether to complete the call. Therefore, increasing LEC liability for LIDB failures in an attempt to place "incentives" on LECs to improve their LIDB will not cause a meaningful

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<sup>12</sup> Comments of Independent Payphone Association of New York, Inc., filed Jan. 14, 1994 ("IPANY Comments"), at 22.

<sup>13</sup> One result of expanding LEC liability for failure of its LIDB but not for any other LEC failures is that LEC customers which suffer losses as a result of LEC failures other than LIDB failures will receive discriminatory treatment because that customer will not receive compensation whereas the LIDB customer will. See U S West Comments at 31-32. See also Rochester Tel Comments at 9.

<sup>14</sup> See U S West Comments at 35-36; Comments of Ameritech Corporation, filed Jan. 14, 1994 ("Ameritech Comments"), at 7; Comments of Southwestern Bell Corporation, filed Jan. 14, 1994 ("SWB Comments"), at 8.

decline in toll fraud. LECs have no direct control of toll fraud through the LIDB. The LEC's capabilities are limited by the parameters of what can be input into the LIDB. The only effect of increasing LEC liability will be to raise rates. Thus, it is not in the public interest to nullify LEC limitation of liability provisions.

**IV. ATTEMPTING TO ESTABLISH A BLANKET RULE FOR ALLOCATION OF LIABILITY FOR TOLL FRAUD LOSSES WILL LEAD TO EXTENSIVE DISPUTES**

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In its NPRM, the Commission made several proposals regarding blanket rules for the allocation of liability among various parties involved in transmitting telephone traffic. It referred first to a scheme adopted by the Florida Public Service Commission ("Florida PSC") to reduce toll fraud losses suffered by pay telephone operators ("PPOs"). NPRM at ¶ 27. Under that scheme, PPOs are required to buy OLS and BNS for each of their pay telephone lines. If they purchase these screening services, they will be held harmless for all toll fraud losses perpetrated through their lines. The losses will then be allocated between LECs and IXCs based on fault determinations. Id. The Commission made a similar proposal in the context of its proposals to allocate liability for LIDB failures. It conceded there that "there may be many different fact patterns each time a loss is generated, making the development of a general rule difficult." NPRM at ¶ 39. PRTC/PRCC wholeheartedly agrees with this statement and urges the Commission not to attempt to create such a blanket rule to assign liability.

As PRTC/PRCC stated in its Comments, adoption of a blanket rule based on fault, such as that required by the Florida PSC plan, will merely lead

to the creation of more disputes and cannot therefore be in the public interest.<sup>15</sup> It may well be impossible to determine whether the LEC or IXC was at fault, either in the case of payphone fraud or LIDB fraud.<sup>16</sup> Thus, each time a toll fraud loss occurs, the LEC and IXC are likely to battle it out over who was really at fault. This will merely increase the costs of the toll fraud loss and will not move the industry in the direction of solving the problem of toll fraud itself.

In addition, adopting a blanket rule may not be in the public interest because it forces all carriers to implement the same procedures to prevent toll fraud. As Pacific Bell observed in its comments, carriers have different capabilities to detect and prevent fraud.<sup>17</sup> Not all carriers may be able to implement LIDB or blocking and screening services. Carriers and their customers also place different values on the investment required to detect and prevent fraud and on the cost of the losses from toll fraud itself.<sup>18</sup>

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<sup>15</sup> PRTC/PRCC Comments at 5-6. See also Comments of Bell Atlantic, filed Jan. 14, 1994 ("Bell Atlantic Comments"), at 5 n.5; U S West Comments at 31 n.44; Comments of the National Telephone Cooperative Association, filed Jan. 14, 1994 ("NTCA Comments"), at 2-3.

<sup>16</sup> See, e.g., U S West Comments at 22 n.33, 44. U S West states that it is unable to match a particular IXC LIDB query to a specific completed call. Sometimes it cannot determine whether a particular IXC queried LIDB at all. Thus it may not be possible to ascertain, for purposes of a fault determination, whether an IXC complied with its duty to access LIDB.

<sup>17</sup> Comments of Pacific Bell and Nevada Bell, filed Jan. 14, 1994 ("Pacific Bell Comments"), at 18.

<sup>18</sup> Id.

**V. CALLS TO THE 809 AREA CODE SHOULD NOT BE BLOCKED**

Several commenters suggested that calls to telephone numbers in the 809 area code should be blocked as part of international direct-dial blocking services because many fraudulent calls are made to that area code, which covers the Caribbean.<sup>19</sup> IPANY states specifically (at 16 n.10):

Puerto Rico's Commonwealth status, and the Territorial status of the U.S. Virgin Islands, should not require those locations to be considered a domestic destination. Because of the serious fraud problem involved in calls to these areas, for purposes of toll fraud liability, they should be subject to the same designation as calls to other Caribbean locations.

This is an outrageous suggestion, and PRTC/PRCC adamantly opposes inclusion of the 809 area code, even as an option, in international direct-dial blocking. Such a solution to the problem of fraudulent calls to countries such as the Dominican Republic and other Caribbean countries paints too broad a brush and moreover would contravene the Communications Act and probably international regulations as well.

Section 1 of the Communications Act of 1934, as amended, states that the purpose of the Commission is "to make available . . . to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." 47 U.S.C. § 151. The Communications Act applies to Puerto Rico as part of the United States. See 48 U.S.C. § 734. By permitting the blocking of calls to the 809 area code, the Commission would be limiting the availability of telephone service to "all the people of the United

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<sup>19</sup> Comments of the American Public Communications Council, filed Jan. 14, 1994, ("APCC Comments") at 20; IPANY Comments at 3, 16-17; Comments of Florida Pay Telephone Association, Inc., filed Jan. 14, 1994 ("FPTA Comments"), at 12.



States" who wish to call Puerto Rico or the U.S. Virgin Islands from payphones and those in Puerto Rico and the U.S. Virgin Islands who wish to receive those calls.

Section 201 of the Communications Act states that it is "the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor." 47 U.S.C. § 201(a). If a customer in New York attempts to call a person in Puerto Rico from a payphone, and the call is blocked, the carrier is not providing communication service upon reasonable request.

The Commission should also explore whether blocking telephone access to a whole region of the world, as IPANY and others suggest, is inconsistent with the regulations of the CCITT. Such an action may also be inconsistent with treaties the United States has with other countries covered by the 809 area code.

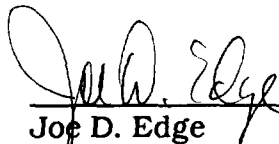
The fact that some calls to foreign countries within the 809 area code are fraudulent is no reason to penalize Puerto Rico and the U.S. Virgin Islands. Many less drastic measures exist which could limit fraudulent calls made to other countries in the 809 area code (assuming such action is otherwise lawful) without impinging on the rights of people in Puerto Rico and the U.S. Virgin Islands to receive telephone calls from the fifty States and of the people of the fifty States to make such calls. For example, the Commission could mandate the separation of the 809 region into two area codes with Puerto Rico and the U.S. Virgin Islands in one and the rest of the countries in the current 809 area in the other. Another option would be to

permit international direct-dial blocking services to block calls based on the 809 area code plus the first three digits of the telephone number, excluding calls to Puerto Rico and the U.S. Virgin Islands from this blocking.

**CONCLUSION**

The Commission should focus its efforts on the prevention of toll fraud. It should not expand LEC liability for failures of its LIDB, and it should not attempt to establish a blanket rule for allocation of liability for toll fraud losses because that will merely lead to new and more complex fact disputes about who was responsible for the toll fraud occurring. Finally, the Commission should not adopt the outrageous suggestion of some commenters that international direct-dial blocking services include blocking of calls to the 809 area code.

Respectfully submitted,



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February 10, 1994

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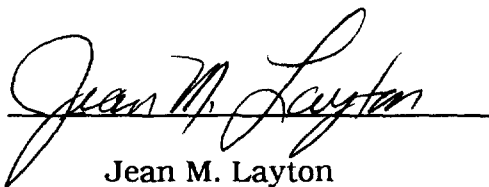
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